

Standing Orders – Overview and Scrutiny

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D1. Introduction

- D1.1 The Council will appoint overview and scrutiny committees in accordance with Article 5.
- D1.2 The committees may appoint sub-committees. The committees and their sub-committees may appoint working parties.

D2. Membership

- D2.1 The ~~elected Mayor~~Leader of the Council, members of the ~~Executive Cabinet~~ and the Chairman/woman of the Council may not be members of the overview and scrutiny committees, their sub-committees or any working parties appointed by the committees or their sub-committees. All other councillors will be eligible to be appointed to the overview and scrutiny committees, their sub-committees or any working parties appointed by the committees or their sub-committees. However, no member may be involved in scrutinising a decision in which he/she has been directly involved.
- D2.2 The composition of the overview and scrutiny committees is set out in Part 3 of this Constitution.
- D2.3 In accordance with the Local Government and Housing Act 1989, each of the overview and scrutiny committees (and any of their sub-committees) must reflect the political balance of the local authority (unless the Council (or the committees, as applicable) agree(s) otherwise with no member voting against).

D3. Co-opted Members with Voting Rights

- D3.1 The Overview and Scrutiny Board and any sub-committee it appoints that deals with education matters will include in their membership the following representatives with voting rights:
- (i) one Church of England diocese representative;
 - (ii) one Roman Catholic diocese representative; and
 - (iii) two parent governor representatives.
- D3.2 When and if Board or sub-committee dealing with education matters also deals with other matters, those representatives shall not vote on those other matters, although they may stay in the meeting and speak. Agendas for these meetings will indicate which matters those representatives may vote on.
- D3.3 Any working party appointed by the Board or its sub-committee to deal with mainly education matters (in the opinion of the Overview and Scrutiny Manager will include in its membership the representatives indicated in Standing Order D3.1).
- D3.4 The Church of England and Roman Catholic dioceses may appoint substitute members to attend meetings of the Board and any sub-committee and overview and scrutiny working party if the nominated representatives are unable to attend.

D4. Co-opted Members with No Voting Rights

- D4.1 Any of the overview and scrutiny committees may recommend to the Council the appointment of non-voting co-opted members.
- D4.2 Any overview and scrutiny sub-committee or working party may recommend to the parent committee, the appointment of non-voting co-opted members.

D5. Chairman/Woman

- D5.1 Each overview and scrutiny committee, sub-committee and working party will elect a Chairman/woman for the Municipal Year from the members (including any church and parent governor representatives) sitting on that body.
- D5.2 Each committee and sub-committee will consider appointing a Vice-chairman/woman. If a church or parent governor representative is elected as Chairman/woman, a Vice-chairman/woman will be appointed and shall be an elected member of the committee or the sub-committee.
- D5.3 If a church or parent governor representative is elected as Chairman/woman of the committee or sub-committee and a non-education matter comes before the committee or sub-committee, the Vice-chairman/woman will take the chair. If there is no Vice-chairman/woman or if the Vice-chairman/woman is not present or is unable to act, the committee or sub-committee will appoint a Chairman/woman for that item. This provision is to allow the Chairman/woman a casting vote if necessary.

D6. Meetings of the Overview and Scrutiny Bodies

- D6.1 The order of business at the overview and scrutiny committees will be:
- (i) to elect a person to preside at the meeting, if the Chairman/woman and Vice-chairman/woman is absent;
 - (ii) to approve and sign as a correct record the minutes of the previous meeting;
 - (iii) to receive any declarations of interest;
 - (iv) to deal with any urgent business dealt with in accordance with the Standing Orders in relation to Access to Information;
 - (v) to deal with any matters which are subject to the call-in mechanism;
 - (vi) to consider responses of the [elected Mayor/Leader of the Council](#) and/or [Executive Cabinet](#) to reports of that overview and scrutiny committee; and
 - (vii) to deal with any other matters set out on the agenda for the meeting.

D7. Reports from Overview and Scrutiny Bodies

- D7.1 Subject to Standing Order D7.2, following each investigation, review or call-in a report will be prepared for consideration by the [elected Mayor/Leader of the Council](#) or the [Executive Cabinet](#), as appropriate (when the recommendations relate to an executive function and the proposals are consistent with the existing Budget and Policy Framework), or the Council (when the recommendations relate to a Council

function or if the proposals would require a departure from or a change to the agreed Budget and Policy Framework). Reports of the overview and scrutiny committees and their sub-committees will be public documents.

- D7.2 In the case of reports prepared in relation to health services or, crime and disorder matters or local improvement targets specified in the Local Area Agreement and related to a relevant partner authority the report will be forwarded to the relevant NHS body or partner authority without reference to the elected Mayor/Leader of the Council, the Executive Cabinet or the Council.
- D7.3 Reports prepared by any overview and scrutiny working party following a review or investigation will be considered in the first instance by the parent overview and scrutiny committee or sub-committee as appropriate. The committee or sub-committee may adopt the report (with or without amendment) and once adopted, the proposals will be classed as proposals of the relevant committee or sub-committee. The report will then be dealt with in accordance with Standing Orders D7.1 and D7.2.
- D7.4 The body or individual to which a report has been referred will, in writing, be required to:
- (i) consider the report and recommendations
 - (ii) respond to the overview and scrutiny committee or sub-committee indicating what (if any) action the body or individual proposed to take
 - (iii) publish the response
 - (iv) provide the member who referred the matter to the overview and scrutiny body under section 21A of the Local Government and Local Involvement in Health Act 2007 (“Councillor Call for Action”) (if applicable) with a copy of the response.

It is the duty of the body or individual to undertake these actions within two months beginning with the date on which the body or individual received the report or recommendations or (if later) the notice.

D8. Production of A Work Programme

- D8.1 The Overview and Scrutiny Board will, early in each Municipal Year, co-ordinate the production of a work programme for the all of the overview and scrutiny bodies for that year. The Board will keep that programme under review during the course of the year. The work programme will be devised having regard to the resources available, time constraints of members and officers and the interests of the local community.
- D8.2 The views of all non-Executive Cabinet members will be taken into account when agreeing the Work Programme including the views of the members who are not members of the largest political group on the Council and of the co-opted members. Executive Cabinet Members, Directors and Assistant Directors will also be consulted on which issues to include within the Work Programme.
- D8.3 In determining which matters to review, regard will be given to sources such as the Community Plan, the Council’s Corporate Plan, the Forward Plan and reports from any other relevant persons or bodies.

D8.4 The work programme must be flexible enough to take account of changing circumstances throughout the Municipal Year. This flexibility will also allow for those recently implemented decisions of the [elected Mayor/Leader of the Council](#) and the [Executive Cabinet](#) to be monitored and scrutinised.

D9. THE “CALL-IN” MECHANISM

- D9.1 Subject to Standing Order D9.6, Standing Order D10 and Standing Order D11, any five members of the Council may request, in writing and within five clear working days of the publication of a decision (Note: this does not include recommendations made to other bodies for decision e.g. Council) made by the [elected Mayor/Leader of the Council](#), the [Executive Cabinet](#), another individual member of the [Executive Cabinet](#) or a committee of the [Executive Cabinet](#) or a Key Decision made by an officer under delegated authority from the [Executive Cabinet](#), the proper officer to “call-in” that decision for scrutiny by the appropriate overview and scrutiny committee. The member whose name (in the opinion of the Overview and Scrutiny Manager) appears first on the Notice of Call-in shall be known as the Call-in Promoter and the other members who have signed the Notice of Call-in shall be known as the Call-in Supporters. Where a matter relates to education, one of the five signatories to a call-in request may be a church or parent governor representative. No other co-opted member may be entitled to sign a call-in notice. Any request for call-in shall set out the reason/s for that request and shall be invalid if no reason is given. Any request for call-in may be withdrawn in accordance with Standing Order D12 below.
- D9.2 On receipt of a written request for a decision to be called-in, the proper officer (in consultation with the Chairman/woman) will call a meeting of the appropriate overview and scrutiny committee to be held within ten working days of receipt of the request (excluding the day of receipt and the day of the meeting). The Call-in Promoter and at least two of the Call-in Supporters shall attend the relevant meeting of the committee (and may be asked to speak on the matter and/or be questioned by members of the committee). With the prior approval of the Overview and Scrutiny Co-ordinator or appropriate Scrutiny Lead Member, a Call-in Supporter may attend in place of the Call-in Promoter. If the Call-in Promoter (or substitute approved in accordance with this Standing Order) and two Call-in Supporters do not all attend the meeting of the committee the call-in request shall be deemed to be withdrawn unless the committee resolves otherwise on a majority vote. The Overview and Scrutiny Co-ordinator or appropriate Scrutiny Lead Member and/or the appropriate overview and scrutiny committee may also require any one or more of the other Call-in Supporters to attend the relevant meeting of the Board and be questioned about the Notice of Call-in and their reasons for supporting it.
- D9.3 If, for whatever reason, a valid meeting of the appropriate overview and scrutiny committee (including any adjourned meeting) is not held within ten working days, the decision will take effect on the expiry of those ten working days unless (in the opinion of the Monitoring Officer) the decision is outside the Budget and Policy Framework.
- D9.4 Having considered the decision, the appropriate overview and scrutiny committee has a number of options open to it:

| Option | Subsequent Action |
|--|---|
| A. Take no further action. | The original decision will take effect from the date of the meeting of the committee. |
| B. Refer the decision back to the decision maker for reconsideration, setting out in writing the nature of the committee’s concerns. | <p>Within a further ten working days, the decision maker will resolve to either:</p> <ul style="list-style-type: none"> (i) confirm the decision without modification; or (ii) confirm the decision with modification; or (iii) rescind the decision. <p>If the decision maker does none of the above within ten working days, the decision shall be deemed to have been rescinded.</p> |
| C. In exceptional circumstances, refer the matter to the Council for scrutiny, giving reasons for why the matter is being referred to Council. | <p>Upon such request, the proper officer shall arrange a meeting of the Council within 20 working days (excluding the day of receipt or the day of the meeting) or as soon thereafter, as is reasonably practicable, unless:</p> <ul style="list-style-type: none"> (i) a normal Council meeting is scheduled within 30 working days (excluding the day of receipt or the day of the meeting) in which case the matter shall be referred to that meeting; or (ii) if a normal Council meeting is not scheduled within 30 working days and the decision-maker confirms to the proper officer that he/she is content for the matter to be referred to the next normal Council meeting. <p>At the Council meeting, if the Council does not object to the decision, no further action is necessary and the decision will be effective from the date of the Council meeting.</p> <p>Provided the decision has been made in accordance with the Policy Framework and the Budget, the Council has no power to amend the decision but may refer any decision to</p> |

Option**Subsequent Action**

which it objects back to the decision maker together with the Council's views on that decision and the Subsequent Action referred to in Option B shall apply.

- D9.5 In each of the options set out in 439.4 above, the decision maker may only be asked to re-consider a matter once.
- D9.6 Subject to Standing Order D10 below, decisions taken by officers will only be subject to call-in if they are Key Decisions (as defined in Article 11).
- D9.7 Where a matter is called-in under this Standing Order D9 no further action will be taken in respect of the decision or its implementation save in accordance with this Standing Order or (if appropriate) Standing Order D10.
- D9.8 None of the call-in procedures apply to the budget setting process which operates its own procedures and prescribed timetable.
- D9.9 The operation of the provisions relating to call-in shall be monitored annually and a report submitted to Council with proposals for review if necessary.

D10. Call-In of Decisions That May Be Outside the Budget or Policy Framework

- D10.1 Where a matter is called-in under Standing Order D9.1 above and the appropriate overview and scrutiny committee considers that the decision is or (if implemented) would be contrary to the Policy Framework or contrary to (or not wholly in accordance with) the Council's Budget, then it shall seek advice from the Monitoring Officer and/or the Chief Finance Officer.
- D10.2 If the advice of the officer/s consulted is that the matter is not contrary to the Budget and Policy Framework (and this is accepted by a majority of the committee) then no further action will be taken under this Standing Order D10, but the matter may still be dealt with under Standing Order D9.4.
- D10.3 If the advice of the officer(s) consulted is that the decision is contrary to the Policy Framework or contrary to (or not wholly in accordance with) the Budget (or if a majority of the committee is still of that view despite contrary advice from the officer/s consulted) the committee shall refer the matter to Council. If the decision has already been implemented the committee shall determine the make a report to Council suggesting any remedial action it considers necessary and make recommendations to the Council accordingly.
- D10.4 If a matter is referred to Council under Standing Order D10.3 an officer's report (setting out the views of the appropriate overview and scrutiny committee and any advice by the Monitoring Officer and/or Chief Financial Officer) shall be sent to the elected Mayor/Leader of the Council and every member of the Executive Cabinet and a copy sent to every other member of the Council. Regardless of whether the decision in question is delegated, tThe Executive Leader of the Council shall then consider the officer's report and publish a Record of Decision with his/her response in advance of meet (as soon as is reasonably practicable) to decide what action to take and to prepare a Executive Cabinet report to the Council meeting.

- D10.5 Where a matter is referred to Council under this Standing Order D10, no further action will be taken in respect of the decision or its implementation until the Council has met and considered the matter.
- D10.6 Where a matter is referred to Council under this Standing Order D10 the Council shall first determine whether or not the decision (if implemented) would be within the Budget and Policy Framework.
- D10.7 If the Council determines that the decision would be within the Framework the Subsequent Action it may take are as per Option C of D9.4.
- D10.8 If the Council determines that the decision would be contrary to (or not wholly in accordance with) the Budget and/or Policy Framework, the decision shall be deemed as a recommendation to the Council and the Council itself shall take the final decision on the matter.

D11. CALL-IN AND URGENCY

- D11.1 The call-in procedure set out above shall not apply where the executive decision being taken is urgent. A decision will be urgent if any delay likely to be caused by the call-in process would prejudice the Council's or the public's interests. The record of the decision, and notice by which it is made public, shall state whether (in the opinion of the decision-making person or body) the decision is an urgent one, and therefore not subject to call-in.
- D11.2 Before deciding whether a decision is urgent, the decision-making person or body shall consult with the Overview and Scrutiny Co-ordinator or (if he/she cannot be reasonably contacted) then:
- (a) (if the decision is a Key Decision and Standing Order E14 (General Exception) applies) each member of the Overview and Scrutiny Board shall be consulted; or
 - (b) (in all other cases) the Chairman of the Council , or (if there is no Chairman/woman of the Council appointed) the Vice-chairman/woman of the Council, shall be consulted.
- D11.3 Decisions taken as a matter of urgency shall be reported to the next available meeting of the Council, together with the reasons for urgency and a summary of the consultation undertaken under Standing Order D11.2.

D12. Withdrawal of a Call-In Notice

- D12.1 A call-in notice may be withdrawn at any time before it is considered by the appropriate overview and scrutiny board if a majority of the first five members (including any co-opted member) whose names appear on the call-in notice give notice in writing (including by e-mail) to the proper officer that they wish their name to be removed from the call-in notice.
- D12.2 No-Once notice to the proper officer under Standing Order D12.1 above has been lodged it may not be withdrawn.

D13. Members' Right to Include Items on Agendas and the Councillor Call for Action

- D13.1 The [elected Mayor/Leader of the Council](#) and any councillor (whether or not a member of any overview and scrutiny committee) may give written notice (including by e-mail) to the proper officer that he/she wishes an item relevant to the functions of an overview and scrutiny committee or any of their sub-committees to be considered at a meeting of that body. On receipt of such request, the proper officer will ensure that it is included on the next available agenda and the item shall be discussed by the appropriate committee or sub-committee with a view to determining whether to request officers to prepare a full report on the matter for submission to a future meeting of that body.
- D13.2 Any co-opted member may give written notice (including by email) to the proper officer that he/she wishes an item relevant to the functions of the overview and scrutiny committee or sub-committee on which they sit to be considered at a meeting of that body. On receipt of such request, the proper officer will ensure that it is included on the next available agenda and the item shall be discussed by the committee or sub-committee with a view to determining whether to request officers to prepare a full report on the matter for submission to a future meeting of that body.
- D13.3 The overview and scrutiny bodies will have regard to the Local Government and Public Involvement in Health Act 2007, any Regulations and any guidance in considering those items referred to in D13.2.

D14. Attendance by Other Members of the Council, Officers and Other Persons at Meetings of Overview and Scrutiny Bodies

D14.1 Each overview and scrutiny committee (and their sub-committees) may require the [elected Mayor/Leader of the Council](#), any other member(s) of the [Executive Cabinet](#) and (subject to Standing Order D14.2) officers of the Council to appear before it to explain (in relation to all aspects of the committee's (or sub-committee's) work):

- (i) any particular decision or series of decisions;
- (ii) the extent to which the actions taken implement Council policy; and/or
- (iii) their performance

and it is the duty of those persons to attend if so required, unless they have a legitimate reason for not doing so.

- D14.2 The only officers who may be called to appear will be executive heads or above (or officers holding posts designated by the appropriate director or assistant director or other officers who have given advice to members). No other officer shall be called unless the Monitoring Officer (in consultation with the Chairman/woman and relevant director or assistant director) agrees otherwise.
- D14.3 Where any member or officer is required to attend an overview and scrutiny committee or any of their sub-committees, the Chairman/woman of the committee or sub-committee will inform the proper officer. The proper officer shall inform the member or officer in writing (including by e-mail) normally giving at least three working days notice of the meeting which he/she is required to attend. The notice will state the nature of the item on which he/she is required to attend to give account and whether any papers are required to be produced for the committee or the sub-

committee. Where the account to be given to the committee or the sub-committee will require the production of a report, then the member or officer concerned will be given sufficient notice to allow for the preparation of that documentation (in the opinion of the proper officer).

- D14.4 Where, in exceptional circumstances, the member or officer is unable to attend on the required date, then the committee or the sub-committee may resolve to adjourn the meeting for the item(s) concerned, and in consultation with the member or officer, arrange an alternative date for attendance (to take place normally within a maximum of ten working days from the date of the meeting).
- D14.5 Subject to Standing Orders D14.3 and D14.4, where the Overview and Scrutiny Board or the Health Scrutiny Board (if appointed) (or one of their sub-committees) is considering a matter in relation to health services in Torbay, the Board or its sub-committee may require an officer of the appropriate NHS trust or body to attend its meeting to explain any particular decision or series of decisions. It is the duty of those persons to attend if so required, unless they have a legitimate reason for not doing so.
- D14.6 Each overview and scrutiny committee (and their sub-committees) may also invite any other person(s) to attend its meetings (but the committee (or its sub-committees) cannot require them to do so). Working parties may only invite (and not require) persons (including members and officers) to attend its meetings. In undertaking its work, the overview and scrutiny committees, their sub-committees and any working parties may seek the views of as many communities and interested parties as the body considers necessary to gain a balanced view.
- D14.7 When the [elected Mayor/Leader of the Council](#), members, officers or other individuals attend overview and scrutiny meetings, the Chairman/woman will explain the purpose of their attendance at the meeting. Questions will be directed through the Chairman/woman who will determine whether they are relevant or if they are repetitive. Those persons attending the meeting will be treated with respect and courtesy and will be given every opportunity to respond. Members will have regard to the European Convention on Human Rights.
- D14.8 When officers attend meetings of any overview and scrutiny committee, their sub-committees and any working party under these provisions, members' questions may only relate to matters of fact and explanation relating to [Executive Cabinet](#) and Council policies and decisions. Officers may be asked to explain, as far as they are able:
- (i) what the policies are;
 - (ii) the justification and objectives of those policies as the officer believes the [elected Mayor/Leader of the Council](#), the [Executive Cabinet](#) or the Council sees them;
 - (iii) the extent to which those objectives may have been met; and
 - (iv) how administrative factors may have affected both the choice of policy measures and the manner of their implementation.
- D14.9 Each committee, their sub-committees and any working parties must bear in mind that officers are employed to give professional advice and shall not be drawn into

discussion of the merits of alternative policies where this is politically contentious. Any comment by officers on the [elected Mayor/Leader of the Council](#)'s, the [Executive Cabinet](#)'s or the Council's policies and actions shall always be consistent with the requirement for officers to be politically impartial.

D15. Application of Standing Orders in Relation to Council Meetings to Overview and Scrutiny Meetings

D15.1 The following Standing Orders in relation to Council Meetings will apply to meetings of all overview and scrutiny committees and their sub-committees: **A3, A4, A5, A7.1 (i) to (iv) inclusive, (viii) and (xi), A7.2, A8.2, A11, A15, A16 (except A16.8(a)), A19, A20 (except A20.2), A21, A22, A23, A25.2, A25.3, A25.4, A25.5, A25.6, A26, A27, A28, A29 and A30.**

D15.2 In applying these Standing Orders to meetings of overview and scrutiny bodies references to the Council shall be deemed to be references to overview and scrutiny bodies and references to the Chairman/woman of the Council and/or Vice-chairman/woman of the Council shall be deemed to be reference to the Chairman/woman and/or Vice-chairman/woman (if appointed) of the overview and scrutiny bodies.

D15.3 The following Standing Orders in relation to Committee and Sub-Committee Meetings will apply to meetings of each overview and scrutiny committee and their sub-committees: **B1, B2, B3 and B4.**

D15.4 So far as the above mentioned Standing Orders in relation to Council Meetings are inconsistent with these Standing Orders in relation to Overview and Scrutiny, the latter shall prevail.

D16. Application of Standing Orders in Relation to Access to Information to Meetings of Overview and Scrutiny Meetings

D16.1 The following Standing Orders in relation to Access to Information will apply to meetings of all overview and scrutiny committees and their sub-committees: **E1 to E11, E19 and E20.**